

ORDINANCE NO. 5000

An Ordinance amending the McMinnville Zoning Ordinance to provide standards for regulating marijuana business activities in McMinnville, and declaring an emergency.

RECITALS:

WHEREAS, Oregon voters approved Ballot Measure 67 (Oregon Medical Marijuana Act) in November 1998. The Act authorizes local governments to adopt reasonable regulations related to the hours of operation, location and manner in which medical marijuana dispensaries are regulated. Subsequently, the 2013 Oregon Legislature passed House Bill (HB) 3460, a bill directing the Oregon Health Authority to establish a registration system for medical marijuana facilities for the transferring and distribution of medical marijuana. In response, in February 2014, the McMinnville City Council adopted Ordinance No. 4975 putting in place certain time, place and manner requirements for medical marijuana dispensaries.

WHEREAS, Oregon voters approved Ballot Measure 91 in November 2014, legalizing the personal use and possession of recreational marijuana with certain limitations, and imposing licensing and other requirements on medical and commercial marijuana activities. The measure was amended by the Oregon State Legislature in 2015 (HB 3400) to provide a number of provisions related to the retailing, wholesaling, processing, and production of marijuana activities, as well as to allow local governments to apply reasonable time, place and manner requirements on such marijuana activities consistent with the City's comprehensive plan, development code, and public health and safety laws.

WHEREAS, consistent with direction provided by the City Council, draft amendments to McMinnville Zoning Ordinance Chapters 17.06 (Definitions), 17.64 (Marijuana Related Activities, a proposed new chapter), and 17.67 (Home Occupation) were prepared by staff and presented to the Planning Commission at a public work session held on December 17, 2015, after due notice had been published in the "News Register." Copies of the draft materials were also posted to the City's website."

WHEREAS, these same draft amendments were presented for purposes of soliciting public testimony at a joint public hearing of the City Council and Planning Commission on December 22, 2015, after due notice was published in the "News Register" on December 15, 2015. In addition, notice of this hearing was provided to the Oregon Department of Land Conservation and Development (DLCD) not less than 35 days prior to the public hearing, as required by post acknowledgement plan amendment requirements.

WHEREAS, following the close of the public hearing and subsequent deliberation, the Commission voted unanimously to forward a recommendation to the City Council for approval of the proposed amendments to Chapters 17.06, 17.64, and 17.67 of the McMinnville zoning ordinance as presented by staff. Now, therefore

THE CITY OF MCMINNVILLE ORDAINS AS FOLLOWS:

Section 1. That Section 17.06 (Definitions) of the McMinnville Zoning Ordinance (No. 3380) is amended by adding the following definitions related to "Marijuana Activities:"

Cannabinoid – Any of the chemical compounds that are the active constituents of marijuana.

Cannabinoid Product – A cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair that contains cannabinoids or dried marijuana leaves or flowers.

Canopy – The surface area utilized to produce mature marijuana plants calculated in square feet and measured using the outside boundaries of any area that includes mature marijuana plants including all of the space within the boundaries.

Cultivation – All phases of growth of marijuana from seed to harvest, or preparing, packaging or repackaging, labeling, or relabeling of marijuana prior to consumption, or incorporation into a recreational marijuana-infused product.

Immature Marijuana Plant - A marijuana plant that is not flowering.

Marijuana – The plant Cannabis family Cannabaceae, any part of the plant of the Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

Marijuana Business – Any person or entity appropriately licensed by the Oregon Health Authority (OHA) or Oregon Liquor Control Commission (OLCC) that sells, produces, cultivates, grows, wholesales, processes or tests medical marijuana or recreational adult use marijuana within the City of McMinnville.

Marijuana Paraphernalia – Any instrument that is used in the manufacture, production, distribution, sale, or consumption of marijuana. Examples include but are not limited to certain types of smoking pipes, bongs, roach clips, rolling papers, grinders, or scales.

Marijuana Processing – Preparing, compounding or conversion of marijuana into edibles, skin and hair products, cannabinoid concentrates, and cannabinoid extracts for medical or recreational purposes. "Processing" does not include packaging or labeling.

Marijuana Production – The planting, cultivation, growing, trimming, drying or harvesting of retail recreational marijuana.

Medical Marijuana Dispensary – A medical marijuana dispensary registered under ORS 475.314 or a site for which an applicant has submitted an application for registration under ORS 475.314.

Medical Marijuana Grow Site – A specific location registered by the Oregon Health Authority and used by the grower to produce marijuana for medical use by a specific patient. Medical grow sites are regulated by state law as follows: 12 mature plants

are allowed per grow site in residential zones; 48 mature plants per grow site in all other zones. If all grows at the site had registered with the State of Oregon by January 2, 2015, the grow site is limited to the number of plants at the grow site as of December 31, 2015, not to exceed 24 mature plants per grow site in a residential zone and 96 mature plants per grow site in all other zones.

Production, Indoor – Producing marijuana within an enclosed building in any manner utilizing artificial lighting on mature marijuana plants, and that does not meet the definition as an outdoor production facility.

Production, Outdoor – Producing marijuana in an expanse of open or cleared ground, or in a greenhouse, hoop house or similar non-rigid structure that does not utilize artificial lighting on mature plants, including but not limited to electrical lighting sources.

Section 2. That the following new chapter, 17.64 (Marijuana Related Activities), is added to the zoning ordinance:

Chapter 17.64

MARIJUANA RELATED ACTIVITIES

Sections:

17.64.010	Purpose
17.64.020	Applicability
17.64.030	Locations
17.64.040	Performance Standards
17.64.050	Non-conforming Use
17.64.060	Enforcement

17.64.010 Purpose. The purpose of this Chapter is to establish zoning regulations that provide for state licensed medical marijuana and commercial recreational marijuana activities allowed under voter-approved statewide initiatives and subject to other statewide administrative rules. The requirements of this Chapter are intended to be consistent with those regulations and, in some cases, augment them as necessary to provide adequate safeguards to address potential public health, safety and welfare considerations, particularly those associated with the cultivation, processing, and production of marijuana and the detrimental effects such activities may have upon McMinnville citizens and neighborhoods.

17.64.020 Applicability.

- A. The requirements of this Chapter shall apply to the following state licensed uses or activities:
1. Medical marijuana dispensaries;
 2. Medical marijuana processing activities;
 3. Medical marijuana production activities;
 4. Commercial marijuana retail activities;
 5. Commercial marijuana wholesale activities;
 6. Commercial marijuana processing activities; and
 7. Commercial marijuana production activities.

- B. Where existing planned development provisions differ from the standards of this Chapter, the standards of the planned development ordinance shall take precedence.

17.64.030 Locations.

- A. Marijuana activities may locate in the following zones, as described below and as may be required by Section 17.64.040.
1. State licensed medical marijuana dispensary or commercial recreational marijuana retail business shall be located only on lands zoned C-1 or C-3.
 2. State licensed medical marijuana processing or production, or commercial recreational marijuana processing or production shall be located only on lands zoned M-1 or M-2.
 3. State licensed commercial marijuana wholesale use shall be located only on lands zoned L-M, M-1, or M-2.

17.64.040 Performance Standards.

- A. In addition to other requirements noted in this Chapter, medical marijuana and commercial recreational marijuana activities shall be subject to the following:
1. Medical marijuana dispensaries and commercial recreational marijuana retail businesses may operate between the hours of 9:00am and 9:00pm only.
 2. Any state licensed marijuana activity operating within the city shall be located indoors within a permanent building and may not locate in a trailer, cargo container or motor vehicle. Outdoor storage of any merchandise, plants, or other marijuana activity related materials is not allowed. Further, no drive-through facilities or temporary facilities shall be permitted.
 3. There shall be no marijuana, marijuana product, or marijuana paraphernalia visible from the exterior of the building.
 4. Medical marijuana dispensaries may not be located within 1,000 feet of another state licensed dispensary.
 5. Commercial recreational retail businesses may not be located within 1,000 feet of another state licensed commercial recreational retail business.
 6. Medical marijuana dispensaries and/or commercial recreational facilities may not be located within 1,000 feet of the following:
 - a. Public, private or parochial elementary or secondary school.
 - b. McMinnville public library, community center, or aquatic center.
 - c. State licensed preschool.
 7. Commercial marijuana production shall be limited to indoor production and up to Tier II size limits (10,000 square foot maximum canopy).
 8. All sites on which a state licensed marijuana facility is located shall provide landscaping and off-street parking consistent with the requirements of Chapter 17.57 (Landscaping) and Chapter 17.60 (Off-Street Parking) of the zoning ordinance.
 9. Signs for locations on which a state licensed marijuana facility is located shall comply with the applicable provisions of Chapter 17.62 (Signs) of the zoning ordinance.
 10. All other development requirements (e.g., fencing, property setbacks and buffers, solid waste disposal, lighting) shall be as required by the zone in

which the marijuana activity is located or otherwise required by the zoning ordinance or applicable planned development ordinance.

11. The City Building Division will require a proof of license from the State (either OHA or OLCC, as applicable) showing the security plan, waste disposal plan, and all other required improvements prior to release of a final occupancy permit.
12. All other applicable requirements of state law regarding the operation of a state licensed marijuana activity shall apply as they now exist or may be amended.
13. The private growing or cultivation of marijuana for non-commercial personal use, as defined by state law, is not regulated by this chapter.

17.64.050 Non-conforming Use. A marijuana activity lawfully established prior to the adoption of this ordinance but that is not in compliance with the allowed uses or the standards for those uses as described in this Chapter shall be considered a lawful nonconforming use. The continuation of a lawful nonconforming use is subject to the applicable provisions of Chapter 17.63 (Nonconforming Uses). In addition, any dispensary that offered for sale commercial recreational marijuana as provided by SB 460 (early sales legislation) prior to the adoption of this ordinance but that is not in compliance with the allowed uses or the performance standards for such use as described in this Chapter shall not be permitted to continue such commercial recreational retail sales after December 31, 2016.

17.64.060 Enforcement. Nothing contained herein shall preclude the issuance of citations for violations of this ordinance, either prior to, concurrently with, or after action is commenced to declare a marijuana activity to be unlawful. Marijuana activities found to be in violation of the provisions of this Chapter, or other applicable provisions of this zoning ordinance, are subject to the provisions of Chapter 17.03 (General Provisions).

Section 3. That Section 17.67.040 (Prohibited Uses) is amended by adding the following:

“G. Marijuana businesses.”

Section 4. That McMinnville Ordinance No. 4975 is repealed in its entirety.

Section 5. Emergency Clause: Pursuant to 2015 Oregon HB 3400, the Oregon Liquor Control Commission will begin accepting applications for the licensing of commercial recreational businesses on or after January 4, 2016. It is imperative that this Ordinance be in place on or before that date to ensure that the siting of these facilities will occur in an orderly fashion and that all applicants, whenever they make application, will be treated similarly. This Ordinance, being necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of McMinnville, an emergency is hereby declared to exist, and this Ordinance shall take effect immediately upon its passage by the City Council and approval by the Mayor.

Passed by the Council this 22nd day of December 2015 by the following votes:

Ayes: Drabkin, Jeffries, Menke, Ruden

Nays: _____

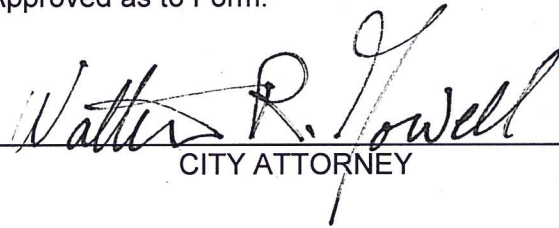
Approved this 22nd day of December 2015.


MAYOR

Attest:


CITY RECORDER

Approved as to Form:


CITY ATTORNEY